LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
NOV 14 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 243

JOSEPH M. BRENNAN, *Petitioner,*

vs.

BERTHA E. SELLERS, *Respondent.*

Petition For Rehearing And Reconsideration Of The Writ of Certiorari To The United States Court Of Appeals For The Tenth Circuit

JOSEPH M. BRENNAN, *Pro Se*
P. O. Box 1115
Denver, Colorado 80201

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 243

JOSEPH M. BRENNAN, *Petitioner,*

vs.

BERTHA E. SELLERS, *Respondent.*

Petition For Rehearing And Reconsideration Of The Writ of Certiorari To The United States Court Of Appeals For The Tenth Circuit

Petitioner prays that the Court vacate and set aside its Order of October 10, 1966, denying his Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit, and grant a rehearing and reconsideration thereof, and as grounds and reasons therefor Petitioner submits and points out matters, facts and things, of which this Court may not have been properly and fully informed of the gravity and widespread aspect thereof, or that it overlooked or misapprehended, and which are in part set forth as follows:

NOTE: Petitioner's Motion to the Court of Appeals for permission to print the Record for transmittal to this Court was not granted, and the original record was sent to this Court in lieu thereof by the Court of Appeals, and in denial of Petitioner's rights therein. Consequently, pertinent references herein are made to the printed Petition for Writ of Certiorari as filed in this Court by Petitioner.

1. That in numerous instances Petitioner was patently denied his rights under the Constitutions of the United States and the State of Colorado; patently denied and foreclosed in his rights under pertinent Statutes in his Replevin suit to recover his stolen personal property, or for the value thereof and incidental damages; and, thereby denied his rights to the due process of law.

2. That in the denial of Petitioner's aforesaid rights, and his every other justifiable rights, the following inescapable material fact underlying his said Replevin suit, is: That each of the ORIGINALS of the two pieces of Petitioner's personal property, as shown by the facsimile photo copies thereof as appended hereto and marked EXHIBITS "F" and "G" (and as were appended to the within Petition for Writ of Certiorari), are only a very small part of Petitioner's personal property and entire personal possessions, which were stolen from Petitioner by Respondent, in connivance and conspiracy with one Anthony E. Reilly in 1957-1958, whereupon, said parties broke into, entered and stole from Petitioner's temporary abode at Denver, Colorado, all of his said personal property and possessions. Significantly, said stolen property included all of Petitioner's possessions, documents, communications and memoranda, particularly those pertaining to said stolen property as shown by said EXHIBITS "F" and "G", and

3. That the U. S. District Trial Court arbitrarily, capriciously and unlawfully denied and foreclosed Petitioner in his rights to the due process of law by its acts and conduct as stated in part as follows, viz:

(a) By said Court's threat to dismiss Petitioner's Replevin suit and his rights therein to recover each piece of his said stolen personal property as shown by said EXHIBITS "F" & "G", and

(b) To compel Petitioner to proceed with the trial on the theory of the conversion of said EXHIBIT "G" by Respondent (As cited in Petition for writ of certiorari, APPENDIX "B", p. 29, par. 2), despite the issues joined for trial of and concerning Petitioner's absolute right of recovery of each two pieces of his said stolen property as shown by said EXHIBITS "F" & "G", and

(c) To foreclose and deny Petitioner his rights to replevy his said piece of stolen personal property as shown by said EXHIBIT "F", by said District trial court's acts, as set forth in Items (a) & (b) above.

4. That although said District Trial Court's dismissal of Petitioner's Replevin suit is vacuous of proper and required reason therefor, despite the verdict of the twelve member jury in favor of Petitioner, nevertheless, the stated reasons for the Court of Appeals affirmance thereof, are, patently baseless and absolutely erroneous. An elucidation thereof (as cited in the Petition for Writ of Certiorari, APPENDIX "B", pp. 29 and 30), are, in pertinent part set forth as follows:

(a) The Court of Appeals ruling erroneously asserts that: As Petitioner did not have either actual or construc-

tive possession of either of his said stolen pieces of personal property, as shown by said EXHIBITS "F" and "G", at the time he commenced his Replevin suit to recover same, he could not recover same in an action in Replevin under the purview of Colorado law, viz, Colorado R. Civ. P. 104. Indeed, said Colorado R. Civ. P. 104 (m), specifically provides,

> "(m) JUDGMENT. In an action to recover possession of personal property, judgment for the plaintiff (Petitioner) may be for the possession or the value thereof in case a delivery cannot be had and damages for the retention."

Such a judgment is what Petitioner sought and to which he was fully entitled to in his said Replevin suit, and upon which basis the issues were joined, and wherein the trial jury found a verdict of $54,000.00 in favor of Petitioner, and

(b) The Court of Appeals ruling erroneously asserts that: Petitioner's only consideration for the purchase of the subject stock certificate (EXHIBIT "G") was Petitioner's services rendered to Respondent, is patently belied by Petitioner's testimony of record, and which clearly establishes and stands uncontradicted, that Petitioner in addition to rendering said services incurred considerable expenditures of his own funds, and wherein he testified to at least two sums of money therein, viz, approximate amounts of $500.00 at one time, and an amount $1,000.00 at another time, although, it was extremely difficult for Petitioner to testify at the 1965 trial, as to such expenditures made during the period from 1954, by reason that all of Petitioner's records of such expenditures, and all communications by and between Petitioner and Respond-

ent, concerning such expenditures and services rendered, in accordance with Respondent's directions, had been stolen from Petitioner by Respondent in 1957-1958, as stated in paragraph (2) hereof, and

(c) That in the face of the acts and conduct of Respondent as set forth in Item (b) above, and the involved theft by Respondent of Petitioners records and personal property as set forth in paragraph (2) above, the Court of Appeals sets up as an excuse to affirm the dismissal of Petitioner's Replevin suit upon the absolutely untennable basis that: Petitioner's services rendered to Respondent and his said expenditures incurred therein for and on behalf of Respondent and as rendered in accordance with Respondent's directions and orders "cannot be a legal premise for a claimed purchase of designated stock (EXHIBIT "G", although) Appellants (Petitioner's) efforts were successful and did indeed enhance the value of Rock Wool (Insulating Co. capital) stock." And, for which valuable services and money expenditures of Petitioner, Respondent affirmatively acknowledged by the execution and delivery to Petitioner of each of the ORIGINALS of said EXHIBITS "F" and "G". And, thereafter with ruthless and wanton abandon Respondent attempts to obliterate Petitioner's rights and interests in and to recovery of any part of Petitioner's stolen property and possessions, the theft of which was instigated and carried into effect by Respondent and as more fully set forth in paragraph (2) above, and which wholesale theft, the said Court's attempt to condone and approve by their aforesaid rulings and judgments to the detriment and injury of Petitioner and the denial of his rights to the due process of law in his said Replevin suit, and

(d) The Court of Appeals ruling which erroneously attempts to assert that; "Appellant (Petitioner) frankly stated that he gave no specific consideration for the subject 253 shares" of Rock Wool Company capital stock is completely refuted by Petitioner's testimony as referred to on pages 18 and 19 of his Petition for Writ of Certiorari, and wherein judicial cognizance is requested to the unwarranted badgering of Petitioner while testifying under oath in the trial Court's attampt to cause Petitioner to testify falsely that no consideration existed for Petitioner's purchase of said stock certificate (EXHIBIT "G"), and in definance of Petitioner's answer to the trial Court's question, and to wit:

"Do I understand that it is your testimony that Mrs. Sellers assigned this stock certificate and executed the additional assignment (EXHIBITS "F" and "G") to you for no cash consideration but for consideration of your doing certain investigative work about the company? It that right? And to which Petitioner answered: No, it is not correct, Your Honor, it was for money that I had spent, already had spent, and for services which I was to perform (for Respondent)."

5. The Court of Appeals ruling is designedly silent in re the duly executed, irrevocable and verified sale and assignment instrument (EXHIBIT "F"), which ruling states (As cited in the petition for Writ of Certiorari, pp. 28-29), viz: "Appellant (Petitioner), by complaint * * * had sought * * * to recover from appellee-defendant (Repondent) the physical possession of stock certificate No. 1 representing 253 shares of the Rock Wool Insulating Company * * *". However, such evasion ignores and denies Petitioner's right, as set forth in his said complaint, to

recover his stolen personal property, viz, the Original of said sale and assignment instrument (EXHIBIT "F"). Such ruling also evades, ignores and denies Petitioner's right of recovery of said piece of stolen property, under the purview of the Colorado Stock Transfer Act, viz, C. R. S. 31-11-1; the Colorado Larceny Act, viz, 40-5-2, 13 and 14; the Colorado R. Civ. P. viz, Rule 104 (m) C. R. Civ. P. (As cited in the Petition for Writ of Certiorari, APPENDIX "C", "D" and "E", respectively), and in denial of the due process of law unto Petitioner concerning his right to recover the Original of said EXHIBIT "F", independent of his right to recover the Original of said EXHIBIT "G", and in violation of the aforesaid Statutes and Rules.

6. The cases listed by the Court of Appeals (As cited in the Petition for Writ of Certiorari, Footnote on p. 28 thereof) have no bearing on, or relationship to Petitioner's within Replevin suit of and concerning recovery of each of his said stolen pieces of personal property as shown by EXHIBITS "F" and "G". In each of such cited cases the Rock Wool Co. Certificates of Stock which Petitioner sought to Replevin never had been in Petitioner's possession, as same were pledged as security for certain loans. However, in said cited Brennan v. Will's case, said Stock Transfer Act, viz, C. R. S. 31-11-1 (As cited in the Petition for Writ of Certiorari, APPENDIX "C", p. 30) had previously been established by said District trial Court and Court of Appeals, as the controlling law for the transfer of title to corporate stock. Contrary to such cited cases it is significant that, the Originals of each of said Certificate of Stock No. 1, and the pertinent sale and assignment instrument (As shown by said EXHIBITS "F" and "G") were in Petitioner's possession at all

times since the delivery thereof to Petitioner by Respondent in September, 1954, and as stolen from him by Respondent in 1957-1958, and as stated in paragraph (2) hereof, and which the Court of Appeals conceded in its affirmance of the dismissal of Petitioner's within Replevin suit (See: Petition for Writ of Certiorari, APPENDIX "B", pp. 28-29). The Court of Appeals in the within Replevin suit now desires to contradict its judgment in said Brennan v. Will's case and thereby arbitrarily, capriciously and unlawfully deny Petitioner his rights under the aforesaid laws and rules, and thereby deny Petitioner his rights to the due process of law to recover either piece of his said stolen property as shown by said EXHIBITS "F" and "G".

7. The District trial Court and the Court of Appeals disregarded, ignored and denied Petitioner, the ruling of this Court in the case of Disconto-Gessellschaft v. U. S. Steel Co., concerning the binding effect of the executed and irrevocable contract by and between Petitioner and Respondent, concerning the endorsement in blank of said Certificate of Stock, and the pertinent sale and assignment, and the simultaneous delivery of each of said executed documents to Petitioner in September 1954, and thereby denied Petitioner his rights to the due process of law to recover each one of pieces of personal property in his within Replevin suit. (See: Petition for Writ of Certiorari, pp. 13-14).

In CONCLUSION it can be said without any reservation that, were the extant denial of Petitioners right to the due process of law to recover each piece of his stolen personal property to prevail, then, justice could only be considered as a dead and lifeless thing. Essentially the

facts of the matter, are, that Petitioner entered into a binding and irrevocable employment contract with Respondent in 1954, wherein he was to perform certain services and incur expenditures therein, for and on behalf of Respondent, whereupon, Respondent in compensation therefor delivered to Petitioner the Original of said Rock Wool Co. Certificate of Stock No. 1, as well as the duly excuted sale and assignment instrument (EXHIBITS "F" and "G").

Significantly, in 1954 the Rock Wool Co. capital stock was worthless, however in 1957-1958, when Respondent stole the Original of said Certificate of Stock No. 1 (EXHIBIT "G"), and with fraudulent intent and design stole said pertinent sale and assignment instrument (EXHIBIT "F"), the said capital stock had become very valuable, and as the Court of Appeals asserted, was incident to Petitioner's efforts and expenditures, and which services and expenditures said Court arbitrarily, capriciously and wrongfully asserted had no value, although, Respondent accepted such services and expenditures under oath as valuable consideration for the purchase of said Certificate of Stock and the sale thereof to Petitioner, as evidenced by said documents as shown by said EXHIBITS "F" and "G", and by the terms on the involved and expressed contract by and between Petitioner and Respondent, and of which the said Courts possessed no lawful authority to modify, change or ignore, or to evaluate Petitioner's services, and wherein Respondent had at no time instituted any rescission of said sale and assignment contract as shown by said EXHIBITS "F" and "G". WHAT THEN HAS PETITIONER RECEIVED FOR HIS YEARS OF ARDUOUS WORK AND EXPENDITURE OF HIS LIFE SAVINGS IN MAKING SAID CAPITAL STOCK

VERY VALUABLE? The jury in its verdict rendered on February 2, 1965, answered that question by its finding of damages in the amount of $54,000.00 in favor of Petitioner, as based upon the facts, evidence, testimony and credibility of the witnesses at the trial thereof, as held in the District Court on February 1 and 2, 1965.

WHEREFORE, by reason of the foregoing, it is submitted, that in the interests of justice, and Petitioner's right to the due process of law, in recovery of his said stolen pieces of personal property, and each separately, that the dismissal of this Court's Order denying the Petition for Writ of Certiorari be vacated and set aside, and that a rehearing and reconsideration thereof be granted in accordance with matters and things in the "CONCLUSION" as set forth on page 26 of said Petition for Writ of Certiorari.

Respectfully submitted,

JOSEPH M. BRENNAN, *Petitioner Pro Se*
P. O. Box 1115
Denver, Colorado 80201

EXHIBIT "G"

INCORPORATED UNDER THE LAWS OF THE STATE OF COLORADO

No. [redacted] Shares 353

[redacted] GAS & OIL COMPANY

CAPITAL STOCK $10,000.00

THIS CERTIFIES THAT David L. Sellers & Bertha E. Sellers, joint tenants is the owner of Three Hundred Fifty-Three Shares of the Capital Stock of [redacted] GAS & OIL COMPANY, fully paid and non-assessable, transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 7th day of March A.D. 1957

Anna Blackwell Secretary

Anthony E. Reilly President

$100 Par Value EACH

Dup: Ex 2 1959 Dec 31 Ex M

6192 Kerr-McGee Corp. 8/12/63

8/12/63 6192 Ex h # 4

6192 Kerr-McGee Corp. #1 30 8/12/63 M.S.N.

For Value Received hereby sell, assign and transfer unto _____

_____

Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____

to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____ 19__

In presence of

_____

David L. Sellers

Bertha E. Sellers

SIGNATURE THE COLORADO [redacted] GUARANTEED

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER

[redacted]-CERT.

EXHIBIT "F"

For and in consideration of the payment of Ten Dollars ($10.00) and other valuable considerations the receipt hereof is hereby confessed and acknowledged, the undersigned party(s), namely, David L. Sellers and Bertha E. Sellers hereby sells, assigns and transfers unto Joseph M. Brennan, all my (our) right, title and interest in or to the Capital Stock of the Rock Wool Insulating Company (a Colorado Corporation), as registered on the books of the said company in my (our) name(s), viz: David L Sellers and Bertha L. Sellers which Capital Stock ownership is represented by and duly executed and issued Stock Certificated of the said company, to wit:

Certificate No.	No. of Shares	Date of Issue.	Signed by Company Officers
1	253	March 17,1947	Anthony E. Reilly, President, and Anne Blockhan Secy. & Treas.

And, I (we) David L. Sellers and Bertha E. Sellers do hereby irrevocably constitute and appoint the said Joseph M. Brennan to transfer, or cause to be transferred, the said Stock on the books of the said Rock Wool Insulating Company with full power of substitution in the premises.

Dated at Denver, Colorado this _____ day of August A.D. 1954.

D.L. Sellers
David L. Sellers

Bertha E. Sellers
Bertha E. Sellers

STATE OF COLORADO)
COUNTY OF DENVER) SS.

David L. Sellers and Bertha E. Sellers on lawful age, first having been duly sworn upon our oath, deposes and says that I (we) have executed the above and foregoing instrument as my (our) free, independent and voluntary act and deed this 28th day of Sept A.D. 1954.

Subscribed and sworn to before me this 28th day of Sept A.D. 1954.

Notary Public

My Commission Expires March 28, 1956

6393
DEF EX 5
Dec 4, 1959

6393
DEF EX 5
Dec 3, 1959

Depo Exhibit 79-E for ID. 5/7/63
4/15/63